Supreme Court, U.S.
FILED
JUL 18 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-2024

In The

Supreme Court of the United States

October Term, 1987

DAVID GLEN MEYERS, et al.,
Petitioners,

v.

CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

*PETER D. LANGLEY, ESQ.
THOMAS A. WATROUS, ESQ.
Gordon, DeFraga, Watrous & Pezzaglia
611 Las Juntas Street
P. O. Box 630
Martinez, CA 94553
(415) 228-1400
Attorneys for Respondent
HAROLD HAALAND
*Counsel of Record

VICTOR J. WESTMAN
County Counsel
*ARTHUR W. WALENTA
Assistant County Counsel
651 Pine Street
P. O. Box 69
Martinez, CA 94553
(415) 372-2074
Attorneys for Respondents,
KAY CROSSLEY, AGNES H. ALLISON and CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES
*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

SUMMARY OF ARGUMENT 1

ARGUMENT 1

I. THE NINTH CIRCUIT DECISION GRANTING PROSECUTORIAL IMMUNITY TO A SOCIAL WORKER EXERCISING INDEPENDENT DISCRETION IN INITIATING A CHILD DEPENDENCY PROCEEDING IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL. 1

II. THE NINTH CIRCUIT DECISION GRANTING QUALIFIED IMMUNITY TO A SOCIAL WORKER ON FACTS PRESENTED IN THIS CASE WAS CONSISTENT WITH EXISTING LAW. 6

III. THE NINTH CIRCUIT CORRECTLY DECIDED THAT RESPONDENTS ALLISON AND CROSSLEY WERE ENTITLED TO QUASI-JUDICIAL IMMUNITY. 8

IV. ALLEGED FAILURE OF DISTRICT COURT TO LIBERALLY CONSTRUE COMPLAINT DID NOT DEPRIVE PETITIONERS OF FAIR HEARING. 9

CONCLUSION 11

TABLE OF AUTHORITIES

Page

CASES

Butz v. Economou, 438 U.S. 478 (1978) 3, 5, 7

Czikalla v. Malloy, 649 F.Supp. 1212 (D. Colo. 1986) 5

Demoran v. Witt, 781 F.2d 155 (9th Cir. 1986) 8, 9

Doe v. County of Suffolk, 494 F.Supp. 179 (E.D. N.Y. 1980) 6

Duchesne v. Sugarman, 566 F.2d 817 (1977) 5, 8

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 7

Haygood v. Younger, 718 F.2d 1472 (9th Cir. 1983) 10

Imbler v. Pachtman, 424 U.S. 409 (1976) 2, 5

In Re Scott County Master Docket, 618 F.Supp. 1534 (D.Minn. 1985) 6

Kurzawa v. Mueller, 732 F.2d 1456 (6th Cir. 1984) 4

Malley v. Briggs, 475 U.S. —, 89 L.Ed.2d 271 (1986) 3

Parratt v. Taylor, 451 U.S. 527 (1981) 10

Pepper v. Alexander, 599 F.Supp. 523 (D.N.M. 1984) 5

Stump v. Sparkman, 435 U.S. 349 (1978) 8

Walden v. Wishengrad, 745 F.2d 149 (2d Cir. 1984) 4

Whelehan v. County of Monroe, 558 F.Supp. 1093 (W.D.N.Y. 1983) 4, 5

STATUTES

42 U.S.C. § 1983 ..... 2, 3

California Code of Civil Procedure §§ 1740, *et seq.* [Footnote 2] 9

California Govt. C. § *821.6* [Footnote 1] 6

SUMMARY OF ARGUMENT

I

THE NINTH CIRCUIT DECISION GRANTING PROSECUTORIAL IMMUNITY TO A SOCIAL WORKER EXERCISING INDEPENDENT DISCRETION IN INITIATING A CHILD DEPENDENCY PROCEEDING IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL.

II

THE NINTH CIRCUIT DECISION GRANTING QUALIFIED IMMUNITY TO SOCIAL WORKERS ON FACTS PRESENTED IN THIS CASE WAS CONSISTENT WITH EXISTING LAW.

III

THE NINTH CIRCUIT CORRECTLY DECIDED THAT RESPONDENTS ALLISON AND CROSSLEY WERE ENTITLED TO QUASI-JUDICIAL IMMUNITY.

IV

ALLEGED FAILURE OF DISTRICT COURT TO LIBERALLY CONSTRUE COMPLAINT DID NOT DEPRIVE PETITIONERS OF FAIR HEARING.

———o———

ARGUMENT

I

THE NINTH CIRCUIT DECISION GRANTING PROSECUTORIAL IMMUNITY TO A SOCIAL WORKER EXERCISING INDEPENDENT DISCRETION IN INITIATING A CHILD DEPENDENCY PROCEEDING IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL.

Contrary to petitioners' contention, the decision of the Court of Appeal for the Ninth Circuit that "HAALAND

should be accorded prosecutorial immunity for his role in the initiation of dependency proceedings against MEYERS" is fully consistent with decisions of this Court and other federal circuits which have considered the issue.

In limiting the application of immunity to the social worker's quasi-prosecutorial function, the Ninth Circuit followed precedent of this court. In *Imbler v. Pachtman,* 424 U.S. 409 (1976), this Court held that a state prosecutor enjoys absolute immunity from liability for damages under 42 U.S.C. § 1983 when he initiates and presents a criminal prosecution. The court noted the well-settled common law rule of prosecutorial immunity and concluded that considerations of public policy underlying the common law rule likewise countenance its applicability under § 1983. *Ibid.* at 424.

Among the factors the Court considered in reaching this conclusion was the threat that the prosecutor's duties would be undermined and the public trust in his office would suffer if he were constrained in making every decision by the consequences in terms of his own personal liability, the serious constraints of time and even information under which a prosecutor must frequently act, and the adverse effect upon the functioning of the criminal justice system if concerns about his potential personal liability hampered the exercise of his judgment. The same considerations apply to a social worker who exercises quasi-prosecutorial functions in the initiation of child dependency proceedings. The protection of children against abuse and neglect is dependent upon the ability of social workers to invoke judicial processes on behalf of children. His performance of these functions is an "integral part of the

judicial process," no less than the prosecutor's initiation of criminal proceedings. Like a criminal prosecutor, a social worker who must exercise his discretion whether to initiate child dependency proceedings should not be constrained by the consequences in terms of his own potential liability. The social worker likewise works under serious constraints of time and information. The judicial system for determining child dependency issues would be adversely affected if the public officer charged with the initiation of dependency proceedings were concerned about resulting personal liability.

The Ninth Circuit also based its opinion upon this Court's decision in *Butz v. Economou,* 438 U.S. 478 (1978), extending the application of prosecutorial immunity beyond those officials engaged in traditional criminal prosecution. The Court noted that federal agency adjudication contains many of the same safeguards as are available in the judicial process. Likewise, a social worker's decision to initiate dependency proceedings leads to a judicial process in which similar safeguards are available as in criminal and administrative proceedings.

The Ninth Circuit's decision in this case was not inconsistent with this Court's recent decision in *Malley v. Briggs,* 475 U.S. —, 89 L.Ed.2d 271 (1986). Unlike the police officer in *Malley* for whom the common law recognized only a limited immunity, no common law principle existed regarding the application of immunity to social workers when section 1983 was adopted in 1871 since the

social work profession did not exist at that time. Also unlike the police officer, the social worker in this case was "intimately associated with the judicial phase" of the child dependency action in juvenile court, for it was within his sole discretion to investigate and initiate such proceedings.

The Ninth Circuit opinion is also consistent with the decision of other federal circuits which have passed on the question whether social workers are entitled to immunity for initiating child dependency proceedings. In *Kurzawa v. Mueller,* 732 F.2d 1456 (6th Cir. 1984) the Court of Appeal held that employees of the Michigan Department of Social Services were entitled to prosecutorial immunity. The Sixth Circuit stated that social workers responsible for the prosecution of child neglect and dependency petitions performed functions analogous to a prosecutor and, like a prosecutor, must be able to make decisions to move forward and be free from intimidation and harassment from dissatisfied parents. *Ibid.* at 1458.

In *Walden v. Wishengrad,* 745 F.2d 149 (2d Cir. 1984), the Court recognized prosecutorial immunity in the case of a County attorney who issued a subpoena in connection with prosecution of a child custody proceeding. The court cited with approval (*Ibid.* at 152) the case of *Whelehan v. County of Monroe,* 558 F.Supp. 1093 (W.D.N.Y. 1983) which held that a social service department employee was immune from liability under Section 1983 for initiating child protective proceedings, because initiating such proceedings is similar to the function of a prosecutor initiating criminal proceedings.

Another District Court, applying *Imbler, Butz,* and *Whelehan,* found prosecutorial immunity in the case of employees of the New Mexico Department of Social Services for their decision to apply for termination of parental rights. *Pepper v. Alexander,* 599 F.Supp.523 (D.N.M. 1984).

The decision of the Court of Appeal for the Second Circuit in *Duchesne v. Sugarman,* 566 F.2d 817 (1977), does not conflict with the Ninth Circuit decision below. In *Duchesne* the Second Circuit found that the initial decision by child welfare workers to remove children from their home without parental consent or a prior court order was permissible in response to an emergency situation but found a violation of due process where the state did not seek to obtain judicial ratification of its decision to retain custody of the children for 36 months, and only after the mother had initiated habeas corpus proceedings. *Ibid.* at 826-828. The *Duchesne* court permitted the defendants to assert a "qualified immunity/good faith" defense to this constitutional violation (*Ibid.* at 832). The Court did not discuss the applicability of prosecutorial immunity because the facts in that case did not warrant such an immunity: no "prosecution" was initiated. In contrast to the facts in *Duchesne,* our present case involves the application of immunity to a social worker only for acts connected with his initiation of dependency proceedings.

Those District Court cases cited by petitioner for the proposition that social workers are entitled only to qualified immunity are distinguishable. In *Czikalla v. Malloy,* 649 F.Supp.1212 (D.Colo. 1986) the District Court rejected the defense of prosecutorial immunity in the case of social workers who caused children to be removed from their par-

ents' home on allegedly insufficient evidence. The social workers were not engaged in initiating judicial proceedings as was involved in the present case. In *In Re Scott County Master Docket,* 618 F.Supp.1534 (D.Minn. 1985), the social worker sought prosecutorial immunity for assisting the County attorney in determining whether to initiate sex abuse prosecutions. In that case, the social worker's function was analogous to the function of a police officer who assists a prosecutor in the preparation of a criminal prosecution. By contrast the social worker in this case bore sole responsibility for determining whether to initiate dependency proceedings. In *Doe v. County of Suffolk,* 494 F. Supp. 179 (E.D. N.Y. 1980), state law provided only qualified immunity to the social worker; the District Court did not find that the social worker exercised independent discretion in deciding to initiate judicial proceedings. By contrast, respondent Haaland exercised independent discretion in initiating the dependency proceeding, and he was entitled to absolute immunity under state law.[1] And, as the District Court found (see Appendix 54a), Haaland enjoyed a broad discretion in carrying out his functions.

II

THE NINTH CIRCUIT DECISION GRANTING QUALIFIED IMMUNITY TO A SOCIAL WORKER ON FACTS PRESENTED IN THIS CASE WAS CONSISTENT WITH EXISTING LAW.

This Court has recognized that government officials are entitled to qualified immunity from civil rights damage

---

1. A California public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment even if he acts maliciously and without probable cause. California Govt. C. § 821.6.

claims unless their special functions or constitutional status require recognition of immunity as a complete protection from suit. *Harlow v. Fitzgerald,* 457 U.S. 800, 806-807 (1982). This court has also recognized that insubstantial suits can be quickly terminated by resolution of the qualified immunity defense on a properly supported motion for summary judgment. *Ibid.* at 808, citing *Butz v. Economou,* supra, 438 U.S. at 507-508. This court defined qualified immunity by reference to a test of objective reasonableness: officials were entitled to the defense if they were performing discretionary functions which did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Ibid.* at 817-818. This court admonished lower courts to a "firm application of the Federal Rules of Civil Procedure" to dispose of cases where the defense was properly raised. *Ibid.* at 819 (footnote 35).

The Ninth Circuit and the District Court below followed this admonition and properly disposed of this case on Haaland's motion for summary judgment. The Ninth Circuit found that respondent Haaland was entitled to qualified immunity for his action in ordering the petitioner father to stay away from his child's home until after a Juvenile Court hearing three days later. The finding of qualified immunity was appropriate on the facts presented to the trial court: Haaland was exercising discretionary authority granted by California law to social workers to remedy and prevent child abuse and neglect. The action he took did not violate any clearly established constitutional or statutory rights of petitioner father since it is indisputable that there was no physical interference with parental custody.

Moreover, Haaland's request to the father was coupled with advice to attend a hearing three days later affording petitioner an almost immediate due process opportunity to be heard. Even a complete physical separation of one parent and his child is constitutionally permissible under emergency conditions if a subsequent hearing is held. *Duchesne v. Sugarman,* supra.

III

THE NINTH CIRCUIT CORRECTLY DECIDED THAT RESPONDENTS ALLISON AND CROSSLEY WERE ENTITLED TO QUASI-JUDICIAL IMMUNITY.

Contrary to petitioner's assertion (Petition, page 33) the Ninth Circuit did not hold that respondents AGNES ALLISON and KAY CROSSLEY were entitled to quasi-judicial immunity "simply because they were court officers." The court below noted that the conduct alleged against ALLISON and CROSSLEY was not "clearly and completely outside the scope of their jurisdiction." *Demoran v. Witt,* 781 F.2d 155, 158 (9th Cir. 1986), citing *Stump v. Sparkman,* 435 U.S.349, 356-357 (1978). According to the petitioner's own allegations, respondents ALLISON and CROSSLEY were performing judicial functions by implementing court orders directing them to take action in their official capacities. Petitioners alleged that the California court ordered visitation to take place "under the supervision of the Conciliation Court and in the presence of a neutral adult to be selected by the Conciliation Court," and that ALLISON failed and refused to arrange such visitation. Petitioners also alleged that the California court ordered respondent CROSSLEY to "make a home visit to the [foster parents'] home and make a written report thereon," but that respondents visited the foster par-

ents' home and attempted to influence the foster parents against petitioners in violation of the order.

In performing their duties, respondents ALLISON and CROSSLEY were acting much like the probation officer in *Demoran v. Witt,* supra, who was alleged to have filed an erroneous probation report pursuant to court order. Like the probation officer in *Demoran,* respondents are entitled to quasi-judicial immunity. ALLISON and CROSSLEY acted as an arm of the state court in carrying out its orders in a pending action for dissolution of marriage; their actions were authorized by state law.[2] They were performing functions "integral to the judicial process," and they are therefore entitled to the protection from harassing damage suits which quasi-judicial immunity provides. The prospect of damage liability under Section 1983 would seriously erode the Conciliation Court's ability to carry out its judicial duties.

IV

ALLEGED FAILURE OF DISTRICT COURT TO LIBERALLY CONSTRUE COMPLAINT DID NOT DEPRIVE PETITIONERS OF FAIR HEARING.

Petitioners assert that the District Court's failure to liberally construe their complaint to allege substantive as well as procedural due process violations deprived them of a chance to prove their case. This argument misses the point: The Ninth Circuit decision affirming the District

---

2. California Code of Civil Procedure §§ 1740, et seq., authorize family Conciliation Court counselors to provide such supervision in connection with the exercise of his jurisdiction as the judge of the family Conciliation Court may direct, and to make such investigations, reports and recommendations as the judge may direct.

Court judgment for respondents was based upon the application of recognized immunities to the facts alleged, regardless of the legal theories purportedly discoverable in petitioner's complaint.

The District Court, as an alternative ground for decision, under *Parratt v. Taylor,* 451 U.S. 527 (1981), held that petitioners failed to allege a deprivation of their liberty interests without due process because they were afforded opportunities for meaningful hearings shortly after the alleged deprivation. The District Court decision noted that the Ninth Circuit had granted a rehearing in *Haygood v. Younger,* 718 F.2d 1472, 9th Cir. 1983, but that a reversal of *Haygood* would not affect the disposition of this case in view of the court's determination that respondents were entitled to the benefit of the immunities (Appendix, Page 63a).

The Ninth Circuit did not rely on the District Court's alternative ground for decision, and in fact did not discuss the issue of adequate post-deprivation hearing or cite the cases of *Parratt v. Taylor,* supra, or *Haygood v. Younger,* supra. Thus, the alleged failure of the District Court to liberally construe petitioner's complaint had no effect on the Ninth Circuit decision. The Ninth Circuit correctly concluded that respondents were entitled to immunity and affirmed the District Court decision on that ground.

———o———

CONCLUSION

The Ninth Circuit properly concluded that a social worker is entitled to prosecutorial immunity when exercising his independent judgment in determining whether to initiate child dependency proceedings. The Ninth Circuit also correctly concluded on the record before it that respondent Haaland was entitled to qualified immunity insofar as he allegedly ordered petitioners' father to temporarily stay away from his children pending a hearing three days later. The Ninth Circuit also correctly determined that the Conciliation Court counselors were entitled to quasi-judicial immunity in connection with their implementation of a state court order where the record established that they were not acting outside the scope of their jurisdiction. Since the petitioners have failed to demonstrate a special and important reason why this court should exercise its discretion to review the decision of the Ninth Circuit, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

PETER D. LANGLEY, ESQ.
THOMAS A. WATROUS, ESQ.
GORDON, DEFRAGA, WATROUS &
PEZZAGLIA
611 Las Juntas Street
P. O. Box 630
Martinez, CA 94553
(415) 228-1400

Counsel of Record for Respondents